

**REMARKS/ARGUMENTS**

Reexamination of the captioned application is respectfully requested.

**A. SUMMARY OF THIS AMENDMENT**

By the current amendment, Applicants basically:

1. Editorially amend the specification.
2. Thank the Examiner for the indication of allowable subject matter in claims 12, 28 and 44<sup>1</sup>, but decline to rewrite these claims as independent claims.
3. Cancel original independent claims 1, 17, and 33 without prejudice or disclaimer.
4. Rewrite claims 2 and 4 as independent claims, incorporating in each the subject matter of original independent claim 1, and amend claims 8 – 11, 13 – 16 to be multiply dependent on both independent claim 2 and independent claim 4.
5. Rewrite claims 18 and 20 as independent claims, incorporating in each the subject matter of original independent claim 17, and amend claims 24 – 27, 29 – 32 to be multiply dependent on both independent claim 18 and independent claim 20.
6. Rewrite claims 34 and 36 as independent claims, incorporating in each the subject matter of original independent claim 33, and amend claims 40 – 43, 45 – 48 to be multiply dependent on both independent claim 34 and independent claim 36.

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<sup>1</sup> Claims 12, 28 and 44 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all limitations of the base claim and any intervening claims (see enumerated paragraph 3 of the Office Action).

7. Amend the dependency of claim 44 (to be dependent on claim 43 rather than claim 35).
8. Amend each of dependent claims 5 – 7, 21 – 23, and 37 – 39 to include explicitly therein the referenced expression, thereby mooted the rejections under 35 USC §112, second paragraph (see enumerated paragraph 1 of the Office Action).
9. Respectfully traverse all prior art rejections (see remarks §B infra).

## **B. PATENTABILITY OF THE CLAIMS**

Claims 1-4, 8-11, 13-16, 17-20, 24-27, 29-32, 33-36, 40-43 and 45-48 stand rejected under 35 USC §102(e) as being anticipated by U.S. Publication 2002/0049062 to Petersen (see enumerated paragraph 2 of the Office Action). All prior art rejections are respectfully traversed.

The Examiner primarily emphasizes paragraphs 0006 and 0007 of U.S. Publication 2002/0049062 to Petersen, but regrettably misapprehends at least paragraph 0007. With the further enlightenment provided below, it is hoped that the Examiner will realize that the commonly-assigned U.S. Publication 2002/0049062 to Petersen does not anticipate Applicant's claims as now amended. Each of Applicant's pending independent claims requires, e.g., that the capacity indication include a value for each of plural spreading factors.

Paragraph 0007 indicates that two basic types of information are reported by the Node B in the existing NBAP specification 25.433v.3.3.0. First, the Node B reports its available internal capacity per Node B and Local Cell to the CRNC. Second, or "In addition", the Node B also reports its consumption laws per spreading factor.

Transmission of these two reported types of information supposedly enable the CRNC to calculate how much free capacity exists when each connection is established and released. As explained in paragraph 0007, this calculation is quite basic:

When a new connection is to be established, the CRNC can compare the Node B available internal capacity that this new connection will consume with the available internal capacity, and can thus know whether or not the new connection will be accepted.

Thus, the internal available capacity utilized in the calculation, and involved in the first report of paragraph 0007, is the total available internal capacity of the Node B, e.g., the available internal capacity of the Node B based on a consumption law sum of the existing connections. This total available internal capacity does not indicate how much capacity exists per spreading factor, but is total for the Node B. Using this reported total available internal capacity and knowing the consumption law per spreading factor, the CRNC can conjecture whether a new connection of a specified spreading factor should be admitted at the Node B.

But the reported available internal capacity of Node B is ambiguous and often unreliable, thereby prompting Applicant to the claimed solution. The prior art practice of merely summing of load values for existing connections to arrive at the reported internal capacity of Node B does not take into consideration relevant factors necessary to obtain an accurate understanding of the actual capacity of Node B. For example, as explained in the last two paragraphs of page 4 and the background portion of page 5 of the specification, issues such as fragmentation and utilization of differing types of resources can contribute to reporting an internal capacity value which is misleading or ambiguous. U.S. Publication 2002/0049062 to Petersen admits as much in paragraph 0008.

To solve the ambiguity of merely reporting an available internal capacity value, Applicant (also) reports a capacity value for each of plural spreading factors. This more accurate information does not lump together a capacity for all spreading factors as occurs in the first report of Petersen paragraph 0007, but results from a separate capacity calculation and is, in fact, a separate item of reported information for each of the plural spreading factors. Given this more detailed information, the CRNC can make a better assessment of available capacity at Node B when a new connection of a certain spreading factor seeks admission.

U.S. Publication 2002/0049062 to Petersen does not teach transmission by Node B of vacancy capacity for each of plural spreading factors. Please keep in mind that the reference in paragraph 0007 to "consumption laws per spreading factor" is merely to the "second" report and not to "the available internal capacity" or "first" report. In other words, the reference in paragraph 0007 to "consumption laws per spreading factor" merely is a report of a one to one association of a spreading factor to a consumption law (i.e., consumption law X applies to spreading factor Y) so that the CRNC can make a projected capacity calculation *with respect to a future new connection* after receiving these factors. Petersen does not teach that the first report of available internal capacity is a delineated for each of plural spreading factors. The first report of available internal capacity is transmitted without regarding to number of connections per spreading factor, but is instead an indication of available internal capacity over all spreading factors. Therefore, U.S. Publication 2002/0049062 to Petersen cannot anticipate. It is respectfully requested, therefore, that rejections based on this reference be withdrawn.

### C. INFORMATION DISCLOSURE STATEMENT (IDS)

Applicant attaches a PTO-1449 and the following documents listed thereon:

(1) sections §8.2.15 and §9.1.32 of the version of 25.433v3.3.0 cited in U.S. Publication 2002/0049062 to Petersen.

(2) sections §8.2.15 and §9.1.31 of the version of 25.433v3.1.0 cited, e.g., on page 4 of Applicant's specification.

Applicant requests consideration and official citation of both of versions of the specification. Applicant has noted that the NBAP specification cited in U.S. Publication 2002/0049062 to Petersen is more current than the 25.433v3.1.0 version which Applicant has already cited.

For the section which describes the Resource Status Indication message (§9.1.32 in 25.433v3.3.0), Applicant has noted that some of the elements have been rearranged in relative to the earlier §9.1.31, but that substantively both versions seem the same.

#### **D. MISCELLANEOUS**

In view of the foregoing and other considerations, all claims are deemed in condition for allowance. A formal indication of allowability is earnestly solicited.

The Commissioner is authorized to charge the undersigned's deposit account #14-1140 in whatever amount is necessary for entry of these papers and the continued pendency of the captioned application, including but not limited to any amounts for IDS fees, extension of time fees, or extra claims fees.

Should the Examiner feel that an interview with the undersigned would facilitate allowance of this application, the Examiner is encouraged to contact the undersigned.

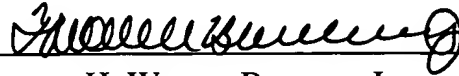
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Serial No. 09/680,265

Atty Dkt: 2380-229  
Art Unit: 2664

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: \_\_\_\_\_



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